The Solicitors' Journal

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CURRENT TOPICS

Sir Cyril Radcliffe, K.C.

ONCE again a distinguished lawyer is called in aid at one of the great moments in the history of the Commonwealth. Sir CYRIL RADCLIFFE, K.B.E., K.C., who has been appointed chairman of the two Boundary Commissions, one for the Punjab and one for Bengal, on the attainment by India of her independence as two separate Dominions, is a young man compared with others of the same attainments. From 1922 to 1937 he was a fellow of All Souls. In 1924, at the age of twenty-five, he was called to the Bar by the Inner Temple, in 1935 he took silk, and in 1943 he became a Bencher of his Inn. He practised mainly in the Judicial Committee of the Privy Council, where his work included the arguing of Indian appeals. During the war his work at the Ministry of Information culminated in his appointment as Director-General of that Department. When the war ended he resumed practice and became Vice-Chairman of the General Council of the Bar. Most lawyers will feel that no better choice could have been made for his present appointment.

Crown Proceedings Bill

THE fact that neither lawyer nor layman will shed a tear over the disappearance of Crown immunity from civil proceedings was amply proved in the debate on the second reading of the Crown Proceedings Bill in the Commons on 4th July. The ATTORNEY-GENERAL described it as a Bill enacting that the rights of the little man were as mighty as the rights of the mighty state, and Sir DAVID MAXWELL FYFE welcomed it with the words: " The greater the part the State plays in general affairs, the greater is the need that the private individual should establish his rights against the State and the duties and responsibilities of the State against him." He suggested, however, that cl. 28 (2), under which a department could refuse to tell the other party to litigation that they had a document which might be considered privileged because of the Minister's opinion of the public interest, contained a difficulty which should be faced, and Departments should be particularly instructed that the extreme power should only be used when the Minister was absolutely satisfied on the question of national interest. Other criticisms of the Bill came from Mr. J. S. C. REID, who said that the serving soldier would be prohibited from bringing any action against either the person responsible or the Crown in respect of any accident to him that arose either when he was on duty or when he was on Government property. He asked for a firm assurance that a man would never be allowed to fall between two stools, and that he would not be excluded from action by the Bill, and also excluded from a pension. Most solicitors have had dealings with the Service Departments, and while there can be little complaint of harshness, apart from exceptional cases, they may well have felt that the mere fact that their decisions are executive and arbitrary gives just cause for a sense of grievance in the subject.

The End of the War

THE date of the end of the war has been fixed so far as leases are concerned by the orders made under the Validation of War-time Leases Act, 1944. Some practitioners have expressed surprise that no general legislation was thought necessary to fix a date for the termination of war-time contracts. The reason is that while the decision in *Lace* v. *Chantler* [1944] 1 K.B. 368, reversing Rowlatt, J.'s decision in *Great Northern Railway Company* v. *Arnold* (1916), 33 T.L.R. 114, made the position impossible by declaring leases for the duration of the war to be ineffective for uncertainty, there was no difficulty so far as the cases were concerned in recognising contracts for the duration of the war as effective. On 3rd July Mr. JANNER asked in the House of Commons when it would be possible to announce an official date for the end of the war. The ATTORNEY-GENERAL, in the course of his reply, said that careful inquiries had elicited that there was no widespread demand for such legislation. Agreements varied so considerably in their subject-matter and circumstances that any attempt to prescribe an arbitrary date would in many cases obscure the real intentions of the parties and obstruct the interpretation of the agreement. In some cases parties might, for instance, have contemplated the cessation of actual hostilities, and in others, the conclusion of a Treaty of Peace.

Charitable Trusts and the Development Charge

IT is not surprising that the LORD CHANCELLOR conceded in the House of Lords on 3rd July that cl. 83 of the Town and Country Planning Bill, relating to land held for charitable purposes, was not wholly satisfactory. Whether the clause as re-drafted will be adequate remains to be seen. VISCOUNT SAMUEL had put down a series of amendments to exclude the investment land of charitable bodies from the development charge. He said he had put down the amendments at the instance of a number of educational and other bodies, the universities and colleges of Oxford and Cambridge, the colleges and schools of Eton, Winchester, Rugby, Westminster, St. Paul's, Christ's Hospital, the Harper Trust, Guy's Hospital, the Foundling Hospital and the Salvation Army. It was absurd, Lord Samuel said, for the State to

encourage and subsidise these institutions on the one hand and to penalise them by taxation on the other. These institutions were looking forward to the time when ripening values of land would come in to support their foundations and compensate for the fall in fixed interest securities and the value of the pound. If they were allowed to retain this increment, Viscount Samuel said, it would not be a private interest which would benefit, but the State. VISCOUNT SIMON supported the amendments, and LORD LLEWELLIN said that the Government was the first since 1693 to take away from these charities something which they relied on to help in the education of the people. The Lord Chancellor promised to re-draft the clause from the beginning, but said that the distinction between operational land and investment land must continue. He added that exemption from the development charge, which was not a tax, would in effect mean an *ex gratia* payment from the Chancellor of the Exchequer. If further State assistance was required he would much rather it was done directly.

Foreign Marriage Bill

IN moving the Second Reading of the Foreign Marriage Bill in the Commons on 27th June, the SECRETARY OF STATE FOR AIR said that the need for the Bill arose from the doubt which had been cast on the legal validity of ninety-two marriages of members of the Royal Air Force and the Royal Navy. The Foreign Marriage Act, 1892, s. 22, dealt with marriages carried out under the authority of the commanding officer of a British army serving abroad, and, in 1925, a legal opinion was given to the Government that the phrase "a British army serving abroad" could rightly be held to cover air forces serving overseas. It was also held, in pursuance of that legal opinion, that marriages solemnised during the war by naval chaplains, in the Mediterranean commands and elsewhere, were valid, there being seventy-five marriages solemnised by Royal Air Force chaplains, and seventeen solemnised by Naval chaplains. A much more recent legal opinion, however, had made the Government doubtful, and cl. 1 (1) cleared up the matter, and removed the doubt about the past and the future. Clause 1 (2) provided that if a second marriage had taken place, and if the first marriage were decided by the courts to be invalid, then the second marriage would not be bigamous, and the party who contracted it must be protected against the charge of bigamy arising retrospectively under the Bill. The subsection restricted this safeguard to those who had contracted the second marriage before 24th April, 1947. Clause 2 contained the new re-drafted s. 22, and provided that marriages solemnised under the amending Act should only be valid if one of the parties was a member of the Armed Forces serving in the territory concerned, or was a person employed in such territory in a prescribed capacity—the capacity prescribed in an Order in Council. It was intended to prescribe that these facilities for marriage should be made available to members of the women's forces and to members of the Control Commission in Germany and Austria, but not to anyone else. After some debate, in which the question was raised of children who might be illegitimate under a marriage validated by the Act, Mr. NOEL-BAKER promised to reconsider the drafting of the Bill, which was then read a second time.

Professional Classes Aid Council

THE Solicitors' Benevolent Association and The Law Society are among the many organisations of professional persons represented on the Professional Classes Aid Council, which provides generous assistance in the education and training of young people, and in cases of illness and convalescence. The council works in close association with many other professional benevolent associations. It is the special object of the council to assist professional people who are ineligible for aid from their own associations. The annual report of the council for the year 1946–47 was presented by the chairman, LADY CYNTHIA COLVILLE, at the annual general meeting on 19th June. On education £3,778 was spent during the last eleven months, and 99 children were helped. The cost of training for the eleven months was £1,981, an increase of £386, 57 students being helped. The total income of the council for the year was £13,290, but that included £5,430 from a special appeal on the "Week's Good Cause" programme of the B.B.C. Funds are urgently needed, as expenditure, even with this aid, has been in excess of income. The address of the council is 20 Campden Hill Square, London, W.8.

Public Corporations

THE transformation of parts of the industrial and social fabric of this country has been accepted by some with resignation and by others with enthusiasm. Up to the present no one has attempted an impartial and objective survey of the results of the changes, and for that reason lawyers will be grateful to Professor WALTER FRIEDMANN for his examination of the legal aspect of new public corporations in two articles, the first of which appears in the July issue of the *Modern Law Review*. The public corporation is no novelty here or abroad (e.g., the Port of London Authority and, according to Professor Friedmann, the most highly developed and instructive of them all, the Tennessee Valley Authority), and it has been adopted in eight major new Acts, "in some as the centrepiece, in others as an auxiliary organ of administration." It is without shareholders and with a board not now appointed on a basis of representation of specific interests, and with a capital provided through assets taken over from private ownership through an issue of interest-bearing stock. It has an independent legal personality, but it is responsible to the competent Minister, and through the Minister to Parliament. Professor Friedmann distinguishes between the corporation designed to run an industry, and the social service corporation such as the New Towns Development Corporations. The difficult problems as to conditions of employment, ministerial powers of direction, financial structure and accounting and auditing of these two different classes of modern public corporation are dealt with sanely and without passion. Students of the new legal aspect of our changing social and economic structure cannot do better than study these articles.

Recent Decisions

In a case in the Probate Division on 4th July (*The Times*, 5th July), FINNEMORE, J., held that the rules as to revocation and presumption of revocation of testamentary documents applied equally to both wills and codicils.

In *Howard* v. *Walker and Others*, on 27th June (*The Times*, 30th June), the LORD CHIEF JUSTICE held that where a customer visiting a shop fell in the forecourt owing to its dangerous surface and the landlords had reserved the right to enter and repair the forecourt, and had in fact done repairs, and the forecourt was not fenced from the highway, the tenant of the shop was liable to the customer as an invitee, but the landlord was not liable, although he would have been liable (*Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56) if the customer had been merely a passenger on the highway who stepped aside on to the forecourt. His lordship said that the law on this matter was not altogether satisfactory.

In *Lancaster* v. *London Passenger Transport Board*, on 1st July (*The Times*, 2nd July), the Court of Appeal (TUCKER, SOMERVELL and EVERSHED, L.JJ.) held that a plaintiff could not recover damages against the Board for his personal injuries resulting from the negligent driving of one of the Board's trolley buses whereby the trolley bus collided with the platform on which the plaintiff was standing while working on one of the Board's tower wagons repairing an overhead line conveying current for the Board's trolley buses, because he and the driver were in the common employment of the Board.

In *I.R.C.* v. *National Anti-Vivisection Society*, on 2nd July (*The Times*, 3rd July), the House of Lords (LORD SIMON, LORD WRIGHT, LORD SIMONDS and LORD NORMAND, LORD PORTER dissenting) held, dismissing an appeal from a majority decision of the Court of Appeal (MacKinnon and Tucker, L.JJ., the Master of the Rolls dissenting) that the Society was not entitled, under s. 37 (1) of the Income Tax Act, 1918, to exemption from income tax on the income of its investments as a body established for charitable purposes only. They further held that the appeal failed because a main purpose of the Society was to obtain the suppression of vivisection by legislation.

DIVORCE LAW AND PRACTICE

CUSTODY OF CHILDREN

THERE has been an important decision recently in *C.* v. *C.* [1947] 2 All E.R. 50; 91 SOL. J. 310, concerning the jurisdiction as to the grant of an order for custody of a legitimated child, whether in the Divorce Court or in courts of summary jurisdiction.

It will be remembered that in *M.* v. *M.* [1946] P. 31, the question arose as to the jurisdiction of the Divorce Court under s. 193 of the Supreme Court of Judicature (Consolidation) Act, 1925, to make an order for the custody of a child born out of wedlock, but legitimated under s. 1 of the Legitimacy Act, 1926, by the subsequent marriage of the parents, although no decree of legitimacy had been obtained under s. 188 of the Act of 1925.

The words of s. 193 are as follows: "In any proceedings for divorce or nullity of marriage or judicial separation, the court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children, the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the court"; and in *M.* v. *M.*, *supra*, it was held by Denning, J., giving to a husband petitioner (to whom a decree *nisi* on the ground of his wife's adultery had been granted) the custody of a child born three months before the marriage, but legitimated under s. 1 of the Act of 1926, that under s. 193 of the Act of 1925 parenthood and not the legitimacy of the child was the test of the applicability of the section.

He further held that, even if the section applied only to legitimate children, a child legitimated by the subsequent marriage of the parents is a legitimate child to which the section applies. In coming to this conclusion the learned judge did not follow three earlier decisions, namely, *Bednall* v. *Bednall* [1927] P. 225; *Green* v. *Green* [1929] P. 101; and *Jones* v. *Jones* (1929), 45 T.L.R. 292, in which it had been held that the court had no jurisdiction to make such an order, founding himself, however, on the judgment in *Langworthy* v. *Langworthy* (1886), 11 P.D. 85 (in which the Court of Appeal upheld the jurisdiction of Butt, J., to refuse to make absolute a decree *nisi*, which had been granted to a husband upon the ground that the marriage was null and void, until provision had been made for the child of the union). The power in this case had been exercised under s. 35 of the Matrimonial Causes Act, 1857, the provisions of which have been re-enacted by s. 193. The section gave the court such powers as it might deem to be just and proper before making its final decree with respect to the custody, maintenance and education of the children, the marriage of whose parents was the subject of the suit or other proceeding. In his judgment Cotton, L.J., stated that the section included sentences of nullity of marriage, and must therefore be considered as enacting that in cases where there was no valid marriage the children of the union might be provided for.

This judgment of Denning, J., was considered in *C.* v *C.*, *supra*, by the Divorce Divisional Court, although the question before the court in fact arose not upon the construction of s. 193 of the Act of 1925, but upon the construction of the Summary Jurisdiction (Married Women) Act, 1895. In giving the judgment of the court, Lord Merriman, P., reviewed the previous authorities referred to by Denning, J., and stated that the court agreed with this decision, which they considered right, holding that the three previous cases referred to were wrongly decided. He gave the reasons shortly as follows: "In a divorce suit, although the welfare of the child is the paramount consideration, the question of custody is an issue between the parents (*Thomasset* v. *Thomasset* [1894] P. 295, at p. 301, *per* Lindley, L.J.) Provided that the other conditions are fulfilled, it is the subsequent marriage of his parents which renders a child legitimate by virtue of the Legitimacy Act, 1926, and it is the same marriage of those parents which is the subject of the proceedings in which the custody order is sought to be made. In our opinion, s. 193 of the Judicature Act, 1925, gives the court jurisdiction in such a case, and a decree of legitimacy under s. 188 of the Judicature Act, 1925, is not a condition precedent to the exercise of that jurisdiction."

The second point dealt with in the judgment, namely, the consideration of the order of the justices which was the subject of the appeal, arose in the following way. An order had been made against the husband appellant in favour of the wife, who had issued a complaint that the husband had deserted her and neglected to maintain her and a child which had been born to her when she was a single woman and of which the husband, then a single man, was the father. The justices gave her the custody of the child, which had been legitimated under the provisions of s. 1 of the Act of 1926 by the subsequent marriage of the parties, although no petition had been presented on behalf of the child and no declaration had been made under s. 188 of the Act of 1925.

The power of the justices to make such an order for custody depended upon s. 5 of the Act of 1895, *supra*, under which an order may be made containing the following provision: "(*b*) A provision that the legal custody of any children of the marriage between the applicant and her husband, while under the age of sixteen years, be committed to the applicant." It was held, dismissing the husband's appeal and affirming the jurisdiction of the justices, that for the purposes of this Act a child legitimated under s. 1 of the Act of 1926 came within the words "any children of the marriage," and the decision in *Re Wick's Marriage Settlement* [1940] Ch. 475 (where upon the construction of the particular instrument, an antenuptial settlement, it was held that a legitimated child was not a child of the marriage) was not followed.

It may be noted that, following upon the decision in *M.* v. *M.*, a Practice Direction was issued cancelling certain previous directions which were in force at the date of that decision, and which are referred to in the report, to the effect that either party to a marriage may claim custody of the child legitimated by s. 1 of the Act of 1926, the child not being described as issue of the marriage, but a separate paragraph being included in the petition setting out the name and date of birth of the child, and the fact of legitimation ([1945] W.N. 234). It would appear that the further particulars required as to the children of the marriage as laid down by r. 4 (1) (*c*) of the Matrimonial Causes Rules, 1947, should now also be included.

Death of petitioner since decree absolute

Where a petitioner who had been granted a decree *nisi* on the ground of her husband's desertion and was granted the custody of the two children of the marriage died after the decree had been made absolute, having made no testamentary disposition with regard to the guardianship of the children in her will, an order was made giving the custody of the children to the parents of the petitioner (*Pryor* v. *Pryor* [1947] W.N. 108). In making this order, Willmer, J., did not follow the earlier decision in *Davis* v. *Davis* (1889), 14 P.D. 162 (in which it was held that there was no power to grant custody to the mother of a petitioner who had been granted a decree of judicial separation and had since died), and he distinguished it on the ground that the application by the mother in that case had been made under the repealed s. 4 of the Matrimonial Causes Act, 1859, the wording of which differed from that of s. 193 of the Act of 1925 which replaced it.

The President, Vice-President and Council of The Law Society gave a dinner on 3rd July, at The Law Society's Hall. Those who accepted invitations included: The Lord Chief Justice, Lord Wright, Lord Moran, Lord Morton of Henryton, Lord Justice Somervell, Lord Justice Scott, Mr. Justice Pilcher, Mr. Justice Lewis, Mr. Justice Morris, Mr. Justice Willmer, Mr. Justice Roxburgh, Mr. Justice Jenkins, Sir Hartley Shawcross, K.C., M.P., and Judge A. Tylor, K.C.

COMPANY LAW AND PRACTICE

COMPANY'S LIEN ON SHARES

TABLE A and most articles of association provide that the company shall have a lien on shares for unpaid amounts on the shares, and commonly the lien extends also in respect of debts of any kind due from the holder of the shares; it is usual, however, to find that the lien is only to attach to partly-paid shares, and indeed, the Stock Exchange requirements for an official quotation do not permit of a lien on fully-paid shares. Partly-paid shares are very much the exception to-day, and accordingly, as in the case of most companies the lien given by the articles extends only to partly-paid shares, questions arising in regard to a lien are not very common, though still liable to arise when, for example, the articles of a private company provide for a lien on fully-paid shares for any debt of the shareholder to the company; and there are a number of reported decisions on the subject of a company's lien on shares.

The existence and scope of the lien depend on the provisions of the particular articles, but it will be remembered that if the articles do not confer a lien or confer a lien only in regard to partly-paid shares, there is nothing improper in the company's altering its articles so as to provide for a lien or to extend the scope of the existing lien to fully-paid shares; and a lien so created or extended will attach in respect of moneys already owing by the shareholder at the date of the alteration of the articles. This is the effect of the decision in the well-known case of *Allen* v. *Gold Reefs of West Africa, Ltd.* [1900] 1 Ch. 656, which is so often referred to on the general question of the extent and limits of the power of a company to alter its articles of association; and it is subject to the overriding principle that the alteration of the articles must be *bona fide* for the benefit of the company, and also to the qualification that in the exceptional case the particular rights of an individual shareholder arising from a contract with the company may not be affected by the alteration.

A lien on shares conferred by the articles of association is in the nature of an equitable charge and would accordingly be enforceable by an application to the court for an order for sale. Usually, however, the articles themselves contain provisions for its enforcement, by authorising the company or its directors, after due notice to the individual shareholder, to sell the shares, and by providing the machinery for the execution of the necessary transfer by a nominee of the directors. An article which provides for forfeiture of shares on which the company has a lien for debts or liabilities otherwise than in respect of unpaid calls is invalid, as forfeiture in such a case would amount to an illegal reduction of capital, and moreover the power to forfeit constitutes a clog on the shareholder's equity of redemption (see *Hopkinson* v. *Mortimer, Harley & Co.* [1917] 1 Ch. 646).

The question which most commonly arises in regard to a company's lien concerns the validity or priority of that lien as against persons other than the registered shareholder who have or acquire rights in the shares over which the lien exists; and such persons may be divided into two classes: (1) purchasers, including mortgagees, of the shares affected, and (2) persons beneficially entitled to shares of which the registered holder is a trustee.

As regards the first class, a purchaser of shares on which the company has a lien is not entitled to be registered so as to become the registered holder free from the lien; but if the vendor has other shares in the company the purchaser is entitled to require the company to resort first to those shares for the satisfaction of its debt (see *Gray* v. *Stone* [1893] W.N. 133). Similarly a mortgagee of the shares will not acquire priority over the existing lien of the company; but he will not be deferred to the company in respect of a lien arising after the company has had notice of the mortgage. This was decided in the well-known case of *Bradford Banking Co., Ltd.* v. *Briggs* (1886), 12 App. Cas. 29. There the company's articles provided that the company should have "a first and permanent lien and charge, available at law and in equity, upon every share for all debts due from the holder thereof." A shareholder deposited his share certificates with the bank as security for the overdraft on his current account, and the bank gave the company notice of the deposit. It was held by the House of Lords that the company could not in respect of moneys which became due from the shareholder to the company after notice of the deposit claim priority over advances made by the bank after such notice. The fact that the articles provided for a "first and permanent lien" could not affect the principle that once the company had notice of the bank's charge it could no longer make advances to the shareholder so as to rank in priority to the debt due to the bank. Hence the importance of giving notice to the company of a mortgage of his shares by a shareholder.

As regards the second class of persons—beneficiaries entitled to shares registered in the names of trustees—with whose interests the claims of a company to a lien on the shares may conflict, the position is much the same as that of a mortgagee, and the respective rights of the company and such beneficiaries will largely depend on the question of notice. In the absence of notice to the company that the holders of the shares are trustees, the lien which the company has under its articles will prevail over the title of the *cestuis que trustent*. Thus in *New London & Brazilian Bank* v. *Brocklebank* (1882), 21 Ch. D. 302, the trustees of a settlement invested part of the trust funds in authorised investments consisting of shares in a limited company, by the articles of which the company had a lien on the shares of any shareholder for moneys owing by him to the company. Subsequently the trustees became indebted to the company in their individual capacity (as partners in a firm which owed the company money), and the company claimed a lien on the shares for their debt. It was held by the Court of Appeal that the company's lien prevailed over the title of the *cestuis que trustent*: the lien took effect as one of the terms on which the trustees were registered as shareholders and the *cestuis que trustent* could not repudiate the terms upon which the shares were acquired by the trustees. Compare with this the decision in *Mackereth* v. *Wigan Coal & Iron Co.* [1916] 2 Ch. 293. There, on the death of a shareholder, the shares were registered in the names of the executors and trustees under his will and, it was held, the company had notice that the registered shareholders were trustees for the beneficiaries entitled under the will. The company's articles contained provision for a lien on shares registered in the name of a member (whether solely or jointly with others) for all debts due from him to the company. Some years after the registration of the trustees, one of them became an agent for the company and in that capacity became indebted to it. The company claimed a lien over the shares in respect of that indebtedness, but it was held that, the company having had notice that there were persons beneficially interested in the shares, and the debt in regard to which the lien was claimed having arisen after such notice, the company could not assert its lien as against the beneficiaries. Where this is the position the trustees can sell the shares and give the purchaser a title free from the lien (see *Mathieson* v. *Gronow* (1929), 45 T.L.R. 604).

Finally it should be observed, as a corollary to the rule that (in the absence of notice of the interests of *cestuis que trustent*) a company's lien extends to shares held by a trustee in respect of the latter's personal debt, that the lien does not extend to such shares in respect of a debt to the company owed by the *cestui que trust* (*Re Perkins* (1890), 24 Q.B.D. 613); and whereas in the former case notice of the beneficial interests will operate adversely to the company's lien, in the latter case the knowledge of the company that the *cestui que trust* is the beneficial owner will not help the company to establish a lien over the shares for the *cestui que trust's* debt, since the lien is conferred in respect of the debts of the registered holder of the shares.

A CONVEYANCER'S DIARY

APPROPRIATION AND STAMP DUTY

In another few weeks we shall find that the stamp duty on conveyances on sale and voluntary conveyances is 2 per cent. *ad valorem* and that various other duties have risen similarly. There will be various questions on the proposed new sections, on which I shall comment as soon as possible after they become law. In the meantime a word may be in place as to the liability to duty as distinct from the rate.

I gather that the full effect of *Jopling* v. *C.I.R.* [1940] 2 K.B. 282 and *G.H.R. Co.* v. *C.I.R.* [1943] K.B. 303, is not everywhere appreciated. In the latter, a tenant for life had contracted to sell some of the settled land, but died before he could complete the transaction. His executors, acting under s. 36 (1) of the Administration of Estates Act, 1925, effected completion by assenting in favour of the purchaser in fee simple. At that date most of us would not have doubted but that an assent could, with propriety, be made in such a case, and that point was not argued. Having now had the benefit of Mr. Williams' book about assents, which I reviewed here a few weeks ago, I feel considerable doubts. For it has now been demonstrated that a modern assent is not different in kind from an assent at common law, and is an operation bringing the dispositions of a deceased person into effect. It is true that s. 36 (1) authorises an assent in favour of a person entitled by devise, bequest, appropriation *or otherwise*, but on fresh consideration I think that " otherwise " can hardly include an ordinary sale. I observe that Mr. Williams (at p. 14) inclines to the view that the particular assent in *G.H.R.* v. *C.I.R.* was in order, because it merely gave effect as regards the legal estate to a sale bindingly made by the deceased. But it should not be supposed, even if this view is correct, that executors can take the larger step of assenting in favour of a purchaser who takes under a sale made by the executors themselves.

However that may be, an assent was used in *G.H.R.* v. *C.I.R.*, and it was argued that no stamp duty was payable, on the ground that subs. (11) of s. 36 of the Administration of Estates Act, 1925, says: " This section shall not operate to impose any stamp duty in respect of an assent." It was erroneously thought by many practitioners that s. 36 (11) meant that assents were not liable to stamp duty. But on this occasion the verbiage has a point and an effect. The subsection merely says that the section does not " operate to impose " any liability to stamp duty. That means only that if, apart from the requirements of s. 36 (the most important of which is that any assent, to carry the legal estate, must be written), the assent would be free of stamp duty, then nothing in s. 36 makes the duty leviable. If, however, duty would be leviable apart from anything in s. 36, then nothing in that section relieves anyone from the payment of duty. Macnaghten, J., accordingly held that *ad valorem* duty was payable.

G.H.R. v. *C.I.R.* thus destroyed the superstition that if a legal estate passes by assent duty is necessarily not payable. Now, where parts of the estate of a deceased person are the subject of an appropriation, it is usual to make the appropriation effective by assent, and indeed, s. 36 expressly contemplates the use of an assent in such a case. But the effect of *G.H.R.* v. *C.I.R.* is that, in considering whether such an assent requires a stamp, one must look to the substance of the transaction to which effect is being given, and not to the formality of assent. *Jopling* v. *C.I.R.* is thus logically posterior to *G.H.R.* v. *C.I.R.*, though in fact a few years earlier. The question in *Jopling's* case was whether share transfers for giving effect to an appropriation to answer a pecuniary legacy were liable to be stamped *ad valorem*. The fact that for shares the form of a transfer is used, whereas land is dealt with by assent, does not affect this matter. It was held that the statutory power of appropriation is the same in kind as the previously existing power and that, in so far as the consent of the person to whom the appropriation is made is required for an exercise of either power, the essence of the transaction is that such person, being entitled to money, buys a portion of the estate in specie and thus incurs stamp duty *ad valorem*. I found the other day that there is a belief in some quarters that this reasoning applies only to the case of a pecuniary legacy such as was in issue in *Jopling's* case itself. This belief is completely unfounded; the earlier decisions on which the court relied in *Jopling's* case, *Re Lepine* [1892] 1 Ch. 210, and *Re Beverly* [1901] 1 Ch. 681, were in fact both cases of shares of residue given on the usual trust for conversion; there is no room for comforting illusions on this matter.

But the essence of the liability to stamp duty is the sale, and there can be no sale except between two parties contracting with one another. Thus, no *ad valorem* duty is payable upon an exercise of the statutory power of appropriation (or the instrument giving effect to it) in a case where s. 41 of the Administration of Estates Act does not make any consent requisite; and I think that it is highly doubtful whether such duty is payable where the consent has to be given by a parent, guardian, committee or receiver on behalf of an infant, a lunatic or a defective, since the legatee himself is incapable of a consensual transaction. Moreover, where the will incorporates a provision under which the consents required by s. 41 are not to be necessary upon the exercise of the power to appropriate, no *ad valorem* duty can be payable, since the personal representative is not selling to the legatee, but forcing upon him a piece of property in specie in lieu of the money to which under the will he is entitled. I suggest, therefore, that, especially now that the duty when payable is as much as 2 per cent., it will be prudent to put in all draft wills a provision that " for exercising the power of appropriation conferred on them by s. 41 of the Administration of Estates Act, 1925, my executors shall not be bound to obtain any such consents as are mentioned in that section." If an appropriation is desirable in a case where there is no such clause, it is worth considering whether a way of escape may be found through arranging for the legatee first to release by deed the right given him by statute to give or withhold consent, and for the appropriation then to be made without his consent.

Another possibility is sometimes available, namely, a partition under s. 28 (3) of the Law of Property Act. A conveyance on partition bears only a ten shilling stamp, plus a stamp *ad valorem* on any equality money (of which there may well be none). The power is, I suppose, available to personal representatives, since it is conferred on trustees for sale, all of whose powers are given to personal representatives by s. 39 of the Administration of Estates Act, 1925. But it appears to me to be wise, in order to prevent the suspicion that the transaction might really be one under s. 41 of the Administration of Estates Act, for the personal representatives first to divest themselves of their character as such and to become trustees, by means of an assent on trust for sale. I may say quite frankly that I can see no practical difference whatever between the two powers, except that the one given by the Law of Property Act is much less often available; however, the difference in effect, *qua* stamps, is clear. The statutory power to partition is available only where the undivided shares are all absolutely vested in persons of full age. Even then, the consent of all the tenants in common is necessary. Though this power in its direct form is consequently seldom available, the court has been known to exercise its powers under s. 57 of the Trustee Act by conferring on trustees an express power of partition by reference to the statutory power (see *Re Thomas* [1930] 1 Ch. 194). The exercise of such express powers would likewise be a partition and not an appropriation with a consequent saving of duty.

LANDLORD AND TENANT NOTEBOOK

EXPIRATION OF NOTICE TO QUIT

THE root of the trouble which led to the litigation in *Crate* v. *Miller* [1947] 2 All E.R. 45 (C.A.), is, I believe, to be sought in the fact that normally the term of a lease does not, strictly speaking, begin or end "on" a day, but (in each case) between two days. It is, of course, impossible for a tenant to enter or quit exactly at midnight, but terms are expressed to commence "on" named days or run "from" named days, and notices to quit, when the tenancies are periodic ones, likewise state days "on" rather than "with" which they are to expire.

Sidebotham v. *Holland* [1895] 1 Q.B. 378 (C.A.), put an end to a long drawn-out wrangle concerning the niceties of distinctions between terms "from" and terms "commencing on," and provided us with authority for the proposition that a notice to quit could safely name either the day before or the day after the midnight when the term could be made to determine. In that case a yearly tenancy was held to have commenced on a 19th May; a notice to quit served on a 17th November named "on the 19th May next" as date of expiry; it was held that this was a good notice and said that a notice to quit on the 18th May would have been good too. There was unanimity on the second point; on the first, A. L. Smith, L.J., expressed some doubt, because the notice did not expire *upon* the last day of the year, but *upon* the day after. But Lindley, L.J., indicated what I have suggested is the root of the difficulty when he said ". . . a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before," and only the hypercritical and cynical would make the comment that what is just as good is also just as bad, and insist on a notice specifying the appropriate midnight. I might remark at this point that, as far as I know, no party to a tenancy has yet complained of the shortening or lengthening of the term by reason of the introduction of "summer time."

The authority of *Sidebotham* v. *Holland*, *supra*, has been invoked again and again; in *Crate* v. *Miller*, *supra*, the facts to which it was applied included the following. (The other facts raised other points, to be dealt with later.) The plaintiff had let the defendant a furnished room on a weekly tenancy which was called a "Saturday to Saturday" tenancy (of this, more presently). On Friday, 5th July, 1946, the plaintiff's solicitors wrote and signed a notice to quit in these terms: ". . . we hereby give you notice that the landlord will terminate your tenancy on Friday, 19th July, 1946, or at the end of the next complete week of your tenancy from the date hereof, on which date you are hereby required to quit and deliver up possession. Dated 5th July, 1946." This notice was served on 8th July.

The tenant contended that the notice was invalid because it did not expire on a Saturday. The court applied *Sidebotham* v. *Holland*, *supra*, and also the authority of *Queen's Club Gardens Estates, Ltd.* v. *Bignell* [1924] 1 K.B. 117, in which a Divisional Court held that a weekly tenancy, like any other periodic tenancy, is determinable by a notice expiring at the end of one of the periods. I do not know how this came in the picture, and should have thought that what may have misled the tenant, who was unrepresented, was some inadequate information about the decision in *Newman* v. *Slade* [1926] 2 K.B. 328. In that case it was held that a weekly tenancy could be determined by a calendar week's notice given on the day corresponding to that on which the tenancy commenced, seven clear days' notice not being required. It may be that the defendant in *Crate* v. *Miller*, *supra*, thought that if he had a "Saturday to Saturday" tenancy he ought to receive a week's notice on a Saturday; but *Newman* v. *Slade*, *supra*, of course, concerns minimum length of notice, not date of expiry.

This brings me to the next point. In the course of his judgment, Somervell, L.J., took the opportunity of observing that "Saturday to Saturday" tenancy was a misleading expression, for if a tenancy for a week began on a Saturday it expired at midnight on the following Friday; and the court for this reason considered that Salter, J., one of the judges who had tried *Queen's Club Gardens Estates, Ltd.* v. *Bignell*, *supra*, had been wrong when he treated a Monday (of a so-called Saturday to Saturday tenancy) as the second of seven days forming a current week. How valuable this guidance is can be seen from examining the facts of *Newman* v. *Slade*, *supra*: for in that case the tenancy was described as a "Monday to Monday" tenancy, but from the judgment of Salter, J., on this occasion, where he says "it is plain that the recipient of the notice has seven days' [not clear days'] notice, but of course it is essential that he should have the whole of *the day for which notice is given*" it would seem that the tenancy then dealt with had begun on, or rather with, a Tuesday.

Presumably parties will go on entering into tenancy agreements of this kind without fully appreciating the implications of the fact that a day runs from midnight to midnight; I think there has been only one case, *Weston* v. *Fidler* (1903), 88 L.T. 769, in which a provision that the key was to be given up before 12 o'clock on the day of leaving showed that some thought had been bestowed on the matter. But the notice in *Crate* v. *Miller*, *supra*, does draw attention to the possibility of improving notices to quit in a way in which I have from time to time suggested that they are capable of improvement: it made it quite clear that the contract was being determined. It also called upon the recipient to quit and deliver up possession, as such notices usually do; but the obligation to quit, as I last pointed out when discussing *Dagger* v. *Shepherd* (1945), 62 T.L.R. 143 (C.A.) (see 90 SOL. J. 27), is but a consequence of the determination of the contract, and not necessarily such a consequence—the tenant may never have occupied.

In seeking to avail themselves of the device of notice in the alternative (which was approved *obiter* in *Sidebotham* v. *Holland*, *supra*) those acting for the landlord in *Crate* v. *Miller*, *supra*, and possibly their typist, did make a mistake: "or at the end of the next complete week of your tenancy *from the date hereof*" should, of course, have been ". . . from the date of service hereof." The mistake was presumably discovered before proceedings were taken; alternative allegations of when the plaintiff became entitled to possession would have been found on calculation to name the same date, but in one case the notice would have been clearly insufficient in point of length. Somervell, L.J., thought that the point might have been taken that the mistake invalidated the whole notice, but as it had not been taken in the county court it was not now open.

TO-DAY AND YESTERDAY

July 7.—On 7th July, 1701, the officers of Gray's Inn were ordered to "warn and give notice to foreigners now in possession of chambers in this House and have families therein to quit the possession thereof before the first day of Michaelmas Term next and in default thereof the said chambers shall be padlocked up."

July 8.—On 8th July, 1709, eighteen barristers of Gray's Inn were called to the Grand Company of Ancients. They were the last to be called to that degree which formerly had ranked just below the Benchers. For some time before 1709, however, their only privilege had been that of occupying a special table in hall and special pews in chapel.

July 9.—On 9th July, 1784, Richard Stacey, Steward of Gray's Inn, "having been very inattentive to the business of the Society so that the same is in a very confused state," was suspended and John Hales, the puisne butler, was authorised to officiate as steward till further order and to demand of Stacey all keys, books and papers belonging to the Society. Stacey had become Steward in 1781 succeeding Thomas Adams, who had died indebted to the Society. Hales died about November, 1787.

July 10.—Sir William Williams, son of Hugh Williams, of Nantanog, in Anglesea, was called to the Bar by Gray's Inn. In 1667 he became Recorder of Chester, which city he represented

in Parliament, being elected Speaker while still a young man. In this capacity it fell to him to reprimand Sir George Jeffreys, kneeling at the Bar of the House of Commons, " for traducing and obstructing petitioning for the sitting of this Parliament." Sir Robert Peyton, whom he also reprimanded, followed him to his chambers in Coney Court and challenged him to a duel, but " the young gentlemen of the Inn coming up to pump him for his unprecedented insolence," Peyton decided to " march off as fast as he could " and, the matter having been reported to the Privy Council, he was committed to the Tower. As one of the recognised leaders of the Whigs, Williams constantly opposed Jeffreys, but eventually his enemies tripped him up in certain proceedings as Speaker and he was subjected to a heavy fine. Subsequently he made his peace with James II, became Solicitor-General and conducted the prosecution of the Seven Bishops. He became one of the best-hated men in England ; the windows of his chambers were broken and " reflecting inscriptions fixed over his door." He died there on 10th July, 1700, but his body was taken to the church at Llansilin, in Denbighshire.

July 11.—On 11th July, 1787, the Gray's Inn Benchers ordered " the Steward to enquire upon what plan the Society of the Inner Temple manages its commons."

July 12.—On the morning of 12th July, 1799, a fatal duel was fought on Blackheath between John Graham, an eminent special pleader of Fig Tree Court in the Temple, and a young man named Julius, a pupil in the office of his brothers, who were attorneys in New Square, Lincoln's Inn. At a dinner party, where they had drunk freely, Julius had expressed some unorthodox opinions on religion and much abrupt language had passed between them. They had, however, been reconciled and had returned to town in the same carriage. Next day, however, they had met again after dinner at the chambers of John Graham's brother, in Lincoln's Inn, and the argument was renewed, though without apparent malignity. On the following morning Julius received a demand for an apology for some expressions he had used. He refused and the duel was fought. Graham was shot in the lower part of the belly. The ball opened the femoral artery and he bled to death the following day.

July 13.—On 13th July, 1759, William Scullard, a collar maker and a reputed smuggler, was brought before the justices at Guildford Quarter Sessions charged with providing horses and acting as guide to two French prisoners of distinction to aid their escape. He was committed to the New Gaol in Southwark and ordered to be fettered. England was then fighting the Seven Years War.

The Case of the Detectives

The case of the two Scotland Yard detectives recently convicted at the Old Bailey of conspiring to steal recalled a far more sensational scandal of seventy years ago, when Chief-Inspectors Druscovitch, Palmer and Clarke and Inspector Meiklejohn stood in the dock. A very profitable series of frauds had for some time past been engaging the attention of the English and French police and the officers arrested were charged, in effect, with entering into a conspiracy to aid the swindlers, to prevent their being arrested and generally to pervert the course of justice. All but Clarke were convicted. The actual frauds, perpetrated by a swindler of genius named Harry Benson, and a more commonplace crook named William Kurr, would, themselves, provide an entertaining story. The scheme turned on a faked betting system, designed to take in wealthy persons in France. The scale on which the conspirators worked may be judged by an observation by Kurr in cross-examination that a certain transaction was not very remarkable : " We only made some eight or ten thousand pounds out of it." The trouble for the police started when Meiklejohn was hot on the trail of Kurr for a little swindle in Edinburgh. " See if you can't buy him over," suggested Benson, and Kurr found to his surprise that he could. While they were engaged in their French venture they used him to tempt Druscovitch, who dealt with most of the foreign cases ; he too proved amenable. These useful connections with Scotland Yard provided essential advance information of warrants issued and the like. Once Meiklejohn was used to convert £13,000 from Bank of England notes into Scotch notes. Another time Druscovitch sent Benson a telegram guardedly hinting that he was coming up to Scotland with a warrant for his arrest. Eventually, after Benson had fled abroad and been detained by the Dutch police, Druscovitch was sent out in charge of the detectives detailed to arrest him. Benson and Kurr were condemned to penal servitude and it was in the belief that their police allies had betrayed them that they made full revelation to the Governor of Millbank prison and brought them to the dock.

Trial Incident

One touch of comic relief may be added to the story. Edward Abinger, afterwards a well-known member of the Bar, was then a youth of twenty, working in the office of an uncle, the solicitor engaged to conduct both the prosecutions. In the case of the detectives, there were so many witnesses that a whole house was taken near the Old Bailey in which to keep them segregated and under observation. Young Abinger's task was to bring each witness to court as required. After a few days of this he got rather bored and decided that a practical joke would enliven the proceedings ; accordingly when the great Sir Hardinge Giffard, afterwards Lord Halsbury, wanted a particular Mr. Smith, he took advantage of the fact that among his charges there were two Smiths with the same Christian name and deliberately brought the wrong one. By the time the wrong Smith was in the box and Giffard had noticed the mistake, Abinger, sitting just behind counsel, was bursting with delight. " Who is this young man unable to control his laughter ? " the great man indignantly demanded of his solicitor, who replied " My nephew." Giffard then turned on the culprit and asked whether he had brought the wrong witness by accident or design. Tremblingly he had to admit that he had done it on purpose and done it for a joke. The situation seemed a good deal less amusing when he was informed that if his conduct was reported to the judge he would be sent to prison for contempt of court.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal]

Appropriation

Sir,—With reference to the " Conveyancer's Diary " in your issue of the 21st June under the above head, there appears to be a further consideration bearing upon the administrator's power to appropriate to himself which has not so far been mentioned.

So far as the real estate of a deceased person is concerned it is suggested that the provisions of the Administration of Estates Act, 1925, in favour of the surviving spouse must be regarded as taking the place of dower and curtesy in the pre-1926 law ; the description of the £1,000 as a " charge " is indicative of its relationship to the interest of a dowress who was a mere incumbrancer until assignment of the dower. Now, although before 1898 the deceased's land, except where he was a mortgagee, did not vest in his personal representative it very often came under the control of the guardian in socage, who was frequently a widow entitled to dower. In this connection the authorities (Co. Litt. 39a, Perk. Prof. Bk., s. 451, Park on Dower, p. 336) are clear that when the widow was guardian in socage she should not " carve for herself " the best, or any portion of the land, and was unable to assign to herself by metes and bounds except after judgment in an action for assignment (Litt., s. 49).

It is submitted that this would be a strong reason for regarding a personal representative as incapable of appropriating in favour of himself before 1926, since his position as administrator bears a distinct resemblance to that of the guardian in socage. Subject to this observation I respectfully agree with the writer of the " Diary " that an administrator can now appropriate to himself, although, since my remarks do not admit of an extra-statutory power of appropriation, s. 41 of the Administration of Estates Act, 1925, can be the only authority therefor.

D. C. Sealy-Jones.

West Ealing, W.13.

OBITUARY

Mr. V. C. NASH

The death has taken place at Cork of Mr. Vesey C. Nash, a retired solicitor. He was formerly a High Court Registrar and had been Marshal and Registrar of the Admiralty Court in Dublin.

Mr. W. J. ROBINSON

Mr. William James Robinson, solicitor, of Messrs. Wansbroughs, Robinson, Tayler and Taylor, of Bristol, died recently, aged eighty-two. He was admitted in 1889.

Mr. W. B. WATTSON

Mr. William Beaven Wattson, solicitor, of Budge Row, E.C.4, died on 22nd June, aged eighty-two. He was admitted in 1890.

THE LAW SOCIETY

ANNUAL GENERAL MEETING

The President of The Law Society, Sir DOUGLAS T. GARRETT, took the chair at its annual general meeting held at Chancery Lane, on the 4th July.

Colonel WILLIAM MACKENZIE SMITH was duly elected President, and Mr. WILLIAM ALLEN GILLETT Vice-President, for the coming year.

Scrutineers were appointed to supervise a postal vote for members of the Council and to report at an adjourned meeting to be held on the 21st July.

The President moved the adoption of the Society's accounts.

Mr. H. B. LAWSON, hon. treasurer, seconding, paid tribute to the work of Sir Arthur Morgan, who had held office as treasurer from 1929 until last October. The present statement of account must, he said, be regarded as closing a chapter covering the period of the war and its aftermath, during which the whole of the reserves, some £55,000, had been used up in order to avoid a rise in the subscription and to make substantial concessions to serving members. The resulting straitened circumstances of the treasury had compelled the Council to raise the subscription from the beginning of next January. The task was now to rebuild. The balance sheet showed no provision for repairs and replacements to buildings or equipment, nor for pensions for the administrative staff, a matter which he hoped would shortly be dealt with by a properly constituted contributory pensions fund. A heavy accumulation of arrears had therefore to be overtaken.

Before 1941, the catering had been undertaken by independent contractors, but its accounts were now shown. The legal education account showed a deficit of some £7,000. The Council did not regard this account as in any way a charge upon members' subscriptions. The deficit was attributable to the restoration to the 1939 figure of grants to many provincial law schools, and to the fact that the London law school, still at an early stage of development, was not able to work at more than a meagre fraction of its capacity by reason of the exemption from attendance, under the Solicitors (Emergency Provisions) Act, 1940, of articled clerks who had served in the Forces or in other branches of national service. This was a temporary phase which should pass with the restoration of normal conditions, though the position was likely to remain difficult for eighteen months or thereabouts. The examination record of the school was most encouraging and its prospects were good. About £12,000 worth of investments had been realised, mostly to pay for capital expenditure on the premises at Lancaster Gate to which the school had moved in 1946, but those premises remained a considerable asset. The Council had to a large extent carried through its plan of staff reorganisation and had successfully built up a permanent staff capable of meeting quickly and well all the demands likely to be made upon it. The volume of work increased unceasingly; much of it was especially difficult and intricate, and all of it was highly important. Pronouncements of the Council in evidence given before Royal Commissions and Government Departments were expected to be authoritative, and in order to provide the service that the times demanded the Society must have a staff of the highest quality. The expansion in the Society's activities and the heavy administrative business which it undertook in the interests of the profession generally, and the still mounting costs of salaries, wages and all other items, suggested that the accounts to be presented a year hence would not make an entirely satisfactory picture. The results would be better than in 1946, but there would probably be little margin for overtaking the seven years of arrears in each of which in normal times due provision would have been made. It was more important than ever that all practising solicitors should become members of The Law Society and share on an equitable basis the burden of financing the essential business which the Society undertook for the whole profession.

Mr. ALLEN PRATT (Cardiff) complained of the meagreness of the grant given to the law school of his society compared with that given to Yorkshire. He observed that salaries had increased by £5,549, but no details had been given, and there was strong feeling in the country that this item of expenditure was unduly lavish. The catering manager apparently received the modest salary of £500 but a commission of £1,282; was not that more than the job was worth? The Society ought not to pay any pensions at all but there should be a proper superannuation scheme on a contributory basis. The salary item of £9,092 paid to the tutorial staff seemed to be large.

The work of the public relations officer (£525) could doubtless be equally well or better done by the staff of the Society.

Mr. A. RAWLENCE (Croydon) said that Surrey also felt doubts about the extravagance of the expenditure. The salaries item was increased very greatly compared with that of 1937—£36,000 against £14,000. Members working near the Society's hall and using its catering facilities freely should pay a higher subscription than those living at a distance.

Mr. H. C. CRANE (St. Albans) hoped that these "very petty" criticisms would not be taken too seriously. Present-day conditions were entirely different and called for a much wider and more businesslike devotion to the interests of the profession. Expenditure on efforts to secure an increase in remuneration, or to increase the prestige of the profession by maintaining closer relations with Government Departments and giving evidence on Royal Commissions, was entirely justified.

Mr. GEOFFREY HEATHER (Portsmouth) desired to see, under the item Publicity, not a decrease but an increase. The public were still convinced that solicitors were well paid for poor persons work.

Mr. CLAUDE HORNBY (London) denied that the criticisms were petty. Solicitors' remuneration had not risen in anything like the same proportion as the figure for salaries. He would not quarrel for a moment, however, with any part of the figure attributable to the salary of the Secretary, Mr. T. G. Lund, because his ability, efficiency and devotion could not be measured in terms of money.

Mr. LAWSON, in reply, undertook that the Legal Education Committee would consider carefully the allocation of grants to the provincial law schools. Not all the grants had been restored to the 1939 figure. The increase in salaries was entirely attributable to the increase in the volume of business, which had grown out of all recognition, and to the general rise in the level of salaries. The two independent catering contractors had both failed in business, and the present manager, in agreeing to work largely on a commission basis, had therefore taken a considerable risk. His work had been amazingly successful. The figure for commission was admittedly higher than had been expected, but that was a very poor and unfair reason for attempting now to revise it, particularly as the catering account produced a profit which went to renew the equipment. A contributory pensions fund was in fact being introduced. The legal education account and the public relations account were both very much under review, together with the whole question of public relations. The whole administrative situation had completely changed since 1937, and what might have been right then was quite impracticable now. The staff must be much larger and the general range of salaries higher. Only a very small proportion of the item House Expenses was attributable to the club facilities, and it would be impossible to divide them.

The PRESIDENT said that in the view of the Council any member was entitled to precise particulars of staff salaries on application, but it was undesirable, and perhaps unfair to the officers themselves, to broadcast them in the report. Perhaps a member who desired to criticise any particular salary would first inform himself of the work done by that member of the staff. He expressed warm appreciation of the hard work done by Mr. Lawson in preparing the accounts on the new basis and in drawing up the pensions scheme. The Society might regard itself as extremely fortunate in its honorary treasurer.

THE MEMORIAL FUND

Moving the adoption of the annual report, the President pointed with pride to its statement of the Society's war record and its 2,000 awards for gallantry. To help solicitors and articled clerks who had been disabled by the war and the dependants of those who had died, the Council had established the Solicitors' War Memorial Fund, a secondary object of which was to provide for a memorial to be set up in the Hall which would include a Book of Memory containing the names and particulars of the solicitors and articled clerks who had fallen. The target figure for the fund had been set at £20,000. On the 31st May some £9,000 only had been received, and in addition some 200 deeds of covenant, which would ensure an annual income over the next six months of £372. The maximum subscription had been fixed at five guineas, or one guinea a year under a deed of covenant, and the President appealed to all members who had not already contributed to do so without delay and so repay something of the debt owed to those who had given their lives. The President thanked Sir Stanley Pott and Mr. P. W. Taylor, on their retirement from the Council, on their valuable past services. Mr. R. A. Cunningham had retired last December from the post of librarian after sixty years' service on the staff, of which he had spent over forty in the library. The fund for his testimonial would be closed on the 14th July, and the new President would present him with a cheque for the amount subscribed on Friday, the 25th July, at 12.30 p.m.

MEMBERSHIP OF THE LAW SOCIETY

The main argument in favour of compulsory membership of The Law Society by all solicitors was that most of the Society's work was done for the profession as a whole. During the past year the Council had had to consider the holding of a poll of all practising solicitors in accordance with the Solicitors Act, 1941, s. 3 (11), to determine whether two-thirds of those voting would be in favour of bringing into force the compulsory membership provisions. In 1940 the Council had published a report setting out the matters with which they proposed to deal in a Solicitors Bill. Compulsory membership had not been one of those matters, but on the motion of a member in the body of the hall it had been decided, after a poll of all members, to include such a provision in the Bill. During the passage of the Bill through Parliament that provision had been amended so that compulsory membership was not to come into force until the Lord Chancellor made an order after being satisfied, on a poll of all practising solicitors, that two-thirds of those voting were in favour of the provisions being brought into force. During the war, owing to the absence of so many solicitors on national service, the Council had not held the poll. They had contemplated holding it in June, 1947, but before taking a final decision they had sounded the opinion of the profession at a conference to which the president and secretary of every provincial law society and the Master and the Clerk of the City of London Solicitors' Company had been invited, and at which there had been a large attendance. At that conference it had become evident that if a poll were held the majority required to enable the Lord Chancellor to exercise his powers was most unlikely to be obtained; and the sense of the meeting had been strongly opposed to the holding of a poll at all at the present time upon this question, upon which opinion in the profession had always been deeply divided. On the other hand, the conference had unanimously declared that the Society should be representative of as nearly as possible the whole of the profession. It had therefore been decided to start a drive for increased voluntary membership. The provincial law societies were

collaborating in this drive, and the President asked all members for their help. It was, he said, essential that the Society should be able to speak for the profession with the maximum of authority. He would not be content until the membership comprised at least 95 per cent. of all solicitors, whether practising or not. He therefore asked each member present to do his best by the end of the year to introduce at least one new member to the Society from outside his own office, apart from trying to persuade every non-member in his office to join.

Some salaried solicitors had pointed out that their membership subscription was not allowed as a deduction for income tax purposes. The President said that if it was an indispensable term of a solicitor's employment that he should be a member of the Society, the deduction would be allowed; many firms paid the membership subscriptions of their salaried solicitors and were thereby allowed to deduct them as office expenses; and the Council had under review the possibility of fixing a special rate of subscription for salaried solicitors. The net increase in the Society's membership for the year was 671; although the present membership was the highest in the Society's history he hoped that by next year that figure would have been far exceeded. The Council had set up a special committee to consider an amendment of the constitution of the Council so as to secure improved representation of the profession upon it. In an interim report it had declared that the Council should be elected under a more representative system than at present—indeed on a constituency basis—and that the number of the Council should be increased from fifty to sixty members, half from London and half from the provinces. This committee had been appointed before notice of the motion to be discussed at the present meeting had been received.

The Staff

During a year the Council had before it many reports from standing committees upon an extremely wide range of subjects. Equal care and consideration were needed in the preparation of all of these, for many of them dealt with very complex and difficult matters. For this reason perhaps above all the Council and the Society must be served by a competent staff. The Society had been so served in the past, but the growth of its work, especially since the war, had meant that the Secretary and his staff had an intolerable burden laid upon them. Nothing but the best work was good enough. The Council must rely very largely upon the staff for the assembly and presentation of matters for its consideration, and especially for the drafting of the evidence to be given before Royal Commissions and departmental committees. Moreover, the evidence which the Society's staff had given to the Denning Committee had shown very clearly that the staff was capable of independent work of the highest quality and value. In addition it must undertake a great deal of general work for the members, such as interviewing and advising solicitors returning from national service, and dealing with applications and enquiries of various kinds. Accordingly the Council had adopted a scheme for the reorganisation of the staff.

Legislation

The Parliamentary committee had had a particularly busy year. The spate of legislation introduced by the present Government had not abated. One of the latest headaches had been provided by the clauses in the Finance Bill relating to retirement and other benefits for directors and employees, which, owing in fair part to The Law Society, the Chancellor of the Exchequer had been induced to recast. The profession as a whole had no idea of the amount of informed and constructive criticism that the Society made on Bills before Parliament. In any case in which the public interest and that of the profession were in conflict the Council recognised that the public interest must prevail. The explicit adoption of that principle in the Society's representations had resulted in the recognition by Government departments that they were made in good faith, and they therefore received sympathetic and often grateful attention. The introduction of the Crown Proceedings Bill had caused the President particular personal gratification. Lord Birkenhead's committee appointed in 1921 had reported in 1927, and since that time the Council had on numerous occasions urged the introduction of the Bill and directed the attention of members of the profession in Parliament to the urgent issues arising. In early 1946 Sir Henry Slesser had drawn attention to the unsatisfactory position in newspaper articles, but the matter had been brought to the fore by the decisions in *Adams* v. *Naylor* and *Royster* v. *Cavey*, which had shown that the convenient legal fiction under which the Crown permitted its liability in tort to be tried as if it were a private individual could not be entertained by the courts. The Council had not been encouraged to hope that a Bill would be introduced for some years, and so the President had written to *The Times* in September last and, with the Chairman of the Bar Council, Mr. G. O. Slade, K.C., again last January, pointing out the immediate need for the Bill. It had been introduced less than a fortnight afterwards. The Parliamentary Committee had formed the view that it was fundamentally an excellent measure and would constitute at least a very important instalment of reform in this branch of the law.

Remuneration

The Council had concerned itself with three main aspects of the problem of solicitors' remuneration. The first was whether it should seek any further percentage increase in remuneration above the 12½ per cent., which had come into force in 1944. The second was whether it could recast the whole basis of remuneration in a way which would prove acceptable to the authorities who fixed it and which would replace the present antiquated system under which solicitors were paid only for the trivial details of their work and not at all for their time, care and expert knowledge and the responsibility they took. The third was whether the Council could suggest any reforms which would reduce the cost of litigation and avoid the position, rapidly approaching, whereby the only people who would be able to afford to litigate would be the very wealthy and the litigant assisted under a legal aid scheme. Last winter the Council had issued a questionnaire to enable it to compile statistics about remuneration and other matters; the Scale Committee had been considering the results and would submit detailed proposals for change as soon as possible. The evidence was unlikely to support any case for a general increase at the present time, but there might be a case for a revision of the higher registers of the Sched. I scale and of the Registered Land Scale, as well as for a general revision of Sched. II. It was easy to criticise the present system but very difficult to suggest any other which might adequately take its place, and the Council would welcome constructive suggestions from members. Lack of staff had handicapped it in considering cost of litigation, but the special committee of members of Council, other members and managing clerks with special experience had done much preliminary work. This body had been considering, among other aspects, the fusion of the two branches of the profession and the systems of remuneration of lawyers in foreign countries. Valuable information on the system in France had been obtained at the Anglo-French legal conference.

International Relations

The Anglo-French conference had been initiated and organised by the Society with its opposite number in France and with the wholehearted backing of the Bar Council and the Society of Public Teachers of Law. It had been designed primarily to promote and foster once again good relations between French and British lawyers after the break of the war years, and to provide an opportunity for comparison between the legal procedures of the two countries. It had been an unqualified success: the French visitors had been most appreciative of the conference arrangements and their entertainment, and much value had resulted from the work, the papers and the discussions on them.

The Law Society with the Bar Council had become a Charter Member of a new association called the International Bar Association, for the creation of which the American Bar Assocation was responsible. It was open, despite its name, to an association of solicitors, and its constitution had been settled at a meeting held in February in New York at which delegates from the legal associations of 28 nations had been present. Mr. Lund, The Law Society's Secretary, had represented both The Law Society and the Bar—probably the first occasion on which a solicitor had been asked to represent the English Bar. His despatch with joint instructions from both bodies had been one of the first results of the establishment of the new joint committee of The Law Society and the Bar Council.

Legal Aid and Advice

It had been a source of disappointment to the Council that the Government had not introduced during the current session a Bill implementing the Rushcliffe Report. The President earnestly hoped that one would be introduced next session; no contribution which the Council could make would be lacking. The Council had submitted to the Lord Chancellor its observations on the scheme proposed by the Rushcliffe Committee for legal representation before courts of criminal investigation, and the work of the Poor Persons Procedure and the Services Divorce Department had been continued meanwhile. The London Committee had succeeded in reducing the arrears of 15,629 to 6,900 during the year 1946. The department was now housed at nine provincial centres as well as London. During 1946 it had dealt with more cases than during the whole of the four previous years of its existence, and during the first three months of 1947 it had been filing petitions at the rate of 20,000 per year.

A new development had been the establishment, at the Government's request and expense, of an American divorce department. This, by arrangement with the Foreign Office, was informed by cable whenever possible of any matrimonial proceedings started in the United States against any woman in the United Kingdom who was thought to be a "G.I. bride." The department tried to get into touch with her, inform her of the proceedings, advise her to consult a solicitor, and offer to act for her if she could not afford to employ her own solicitor. The test of eligibility was substantially that now applied in services divorce cases. Where a wife could afford to pay her solicitor in England but not an American attorney, The Law Society was in a position to arrange that these costs were met out of public funds.

Remission of Stamp Duties

The President said he had kept to the last some information which would gladden the hearts of all solicitors. Ever since the end of the eighteenth century the solicitors' profession had been singled out to bear a heavy burden of special taxation. Members would doubtless have read that the Chancellor of the Exchequer proposed to reduce the stamp duty of £80 on articles of clerkship to a nominal sum of 2s. 6d. They might, however, have failed to notice that the previous Saturday's Order Paper had contained a proposal in the name of the Chancellor to introduce a clause in the present Finance Bill abolishing the duty of £25 on admission as a solicitor, and also, what was even more important, reducing the duty on practising certificates from £9 for London solicitors, and £6 for provincial solicitors, to the nominal sums of 9s. and 6s. respectively, with corresponding reductions in the half-rate duties. For nearly a century the House of Commons had on many occasions declared that the duty was unjust and oppressive. In November last the Council had asked the Chancellor to receive a deputation, but he had said he did not feel that any useful purpose would be served by doing so. The Council, undeterred, had taken up the matter with the Lord Chancellor's Department. Mr. Silverman, M.P., had put down his amendment to the Finance Bill for the repeal

of stamp duty on articles of clerkship, and in view of the cordial reception which the Chancellor of the Exchequer had given to that amendment, the Council had immediately written to him again and the President had written personally to the Lord Chancellor. Within a day or two the Chairman of the Board of Inland Revenue had told the President at an interview that the reason why no useful purpose would be served by a deputation was that the Chancellor of the Exchequer was in complete agreement with the Council's request. The reduction of the duty on practising certificates rather than its complete abolition avoided the necessity for a Solicitors Bill to give effect to a large number of consequential amendments. Next year it would be completely abolished. The President disclaimed any personal credit, but felt himself extraordinarily fortunate in being in a position, at the end of a strenuous and enjoyable year of office, to make such a very comfortable announcement as that this ancient wrong of the profession was at last to be put right.

(To be concluded)

NOTES OF CASES

COURT OF APPEAL

In re **The Pharmacy and Medicines Act, 1941; Potter & Clarke, Ltd.** *v.* **The Pharmaceutical Society of Great Britain**

Lord Greene, M.R., Cohen and Asquith, L.JJ.

25th April, 1947

Medicine—Retail sale—"Substance recommended as a medicine"—Pharmacy and Medicines Act, 1941 (4 & 5 *Geo.* 6, *c.* 42), *ss.* 11, 12, 17.

Appeal from a decision of Wynn Parry, J. (90 SOL. J. 585).

The plaintiffs took out a summons under the Pharmacy and Medicines Act, 1941, to obtain a construction of certain provisions of the Act, the defendants being the Pharmaceutical Society of Great Britain, who, under s. 15 of the Act, had the duty to take all reasonable steps to enforce its provisions. Section 11 of the Act provides that "(1) . . . no person shall (*a*) sell by retail any article consisting of or comprising a substance recommended as a medicine" unless the appropriate designation and quantitative particulars of the constituents are given in accordance with the requirements of the Act. Section 12 provides that "(1). . . no person shall sell by retail any article consisting of or comprising a substance recommended as a medicine unless he is" an authorised person as described in the section. Section 17, the definition section, provides that " . . . 'substance recommended as a medicine', in relation to the sale of an article consisting of or comprising a substance so recommended, means a substance which is referred to (*a*) on the article, or on any wrapper or container in which the article is sold, or on any label affixed to, or on any document enclosed in, the article or such a wrapper or container . . . in terms which are calculated to lead to the use of the substance for the prevention or treatment of any ailment, infirmity, or injury affecting the human body." The questions for decision were (*a*) whether certain substances, when sold under certain labels and wrappers, were or were not "substances recommended as a medicine," and (*b*) whether certain substances, labelled in a certain way, were or were not sold under a proprietary designation. The second question was not involved in this appeal. The substances were as follows: (*a*) a package labelled "Senna Pods, Potter & Clarke, Ltd. . . . (address)"; (*b*) a package labelled "Trade Mark: Winged Lion Brand. Fluid Extract of Cascara Sagrada. British Pharmacopœia. Dose: half to one teaspoonful in half a wineglass of water"; (*c*) a package labelled: "Lemon and Squill Linctus. Potter & Clarke, Ltd. . . . (address)"; (*d*) a package labelled: "Compound Rhubarb Pills. Dose: One or two at bed-time. P., Ltd., Burnley"; (*e*) a package labelled: "Extra strong Effervescing Powders. Prepared by Carter & Sons, Sheffield", followed by directions for dissolving and the instruction "take first thing in the morning on an empty stomach." Wynn Parry, J., decided in the negative as regards (*a*), and in the affirmative as regards (*c*), and these decisions were not under appeal. He decided in the affirmative as regards (*b*), (*d*) and (*e*), from which decisions the plaintiffs appealed.

ASQUITH, L.J., in delivering the judgment of the court, said that the plaintiffs contended that a preparation could not be a "substance recommended as a medicine" unless the label specified the ailment or group of ailments for the treatment of which the substance was appropriate. The defendants contended that the definition was satisfied, even though the label mentioned no ailments, provided that it was common knowledge that the substance was used for the treatment of an ailment. If the court were to construe the definition section *in vacuo*, without having regard to the state of the law before 1941, and without seeking to ascertain the underlying policy of the Act of 1941, the construction would be that favoured by the plaintiffs, as (*a*) the actual terms of the label must be "calculated to lead to the use" of the substance, unconnected with the general knowledge of the public as to its efficacy, and (*b*) parts of the Act imposed criminal liabilities, and the defendants' construction would require a vendor to know at his peril the state of knowledge of an individual customer relative to the preparation in question. If the contrary criterion were assumed, a vendor would be liable to a fine of £20 for selling a bottle of aspirin so labelled, provided that it was common knowledge that aspirin was good for headaches. The court could not believe that the Legislature intended such grave consequences to follow from calling a spade a spade. There was no real doubt or ambiguity as to the meaning of the relevant words. Even if there were some doubt, a comparison of the Act of 1941 with the *status quo* on which it was superimposed would do nothing to displace the construction at which the court had arrived. The appeal would be allowed.

COUNSEL: *H. Glyn-Jones*, K.C., *G. G. Honeyman* and *R. P. Colinvaux*; *Blanco White*, K.C., and *J. G. P. Comyn*.

SOLICITORS: *Constant & Constant*; *Thompson, Quarrell and Megaw*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

Tutin *v.* **Northallerton Rural District Council**

Cohen, L.J., and Lynskey, J. 15th May, 1947

Housing—Compulsory purchase order—Confirmation—Order operative—Subsequent action against acquiring authority—Validity—Housing Act, 1936 (26 *Geo.* 5 & 1 *Edw.* 8, *c.* 51), *s.* 75, *Sched. I, para.* 3 (*b*), *Sched. II, paras.* 2, 3.

Appeal from a decision of Vaisey, J.

The defendant rural district council, in 1945, made a compulsory purchase order under the Housing Act, 1936, in respect of land opposite the plaintiff's house in order to erect four houses on it. Six weeks later, the Minister of Health confirmed the order. The compulsory purchase order was not challenged by the plaintiff within six weeks of its confirmation as prescribed by para. 2 of Sched. II to the Act. By para. 3 of that Schedule, except as provided in para. 2, a compulsory purchase order is not to "be questioned . . . in any legal proceedings whatsoever," and it becomes operative six weeks after confirmation. The plaintiff in 1946 brought an action against the rural district council complaining that the erection of the four houses in question would spoil the view from her house and, to their knowledge, destroy a substantial part of its amenity; that the council had not informed the Minister of that fact, so that he had confirmed the order in ignorance of it; and that, in so acting, they had not made a *bona fide* or reasonable exercise of their statutory powers. The plaintiff further contended that the site in question was to the council's knowledge required for the amenity and convenience of her house, and that its compulsory acquisition was accordingly prohibited by s. 75 of the Act whereby nothing in the Act is to authorise compulsory acquisition of any land which "forms part of any . . . garden . . . or is otherwise required for the amenity or convenience of any house." She accordingly claimed a declaration that the council's action was *ultra vires*, an injunction to restrain erection of the houses, and damages. Vaisey, J., being of opinion that the action was an attempt to attack the validity of the compulsory purchase order in legal proceedings otherwise than as prescribed by para. 2 of Sched. II to the Act, and so contrary to para. 3, ordered the statement of claim to be struck out. The plaintiff appealed.

COHEN, L.J., said that counsel for the plaintiff had argued that by a claim for damages it was not sought to impugn the validity of the order. The declaration claimed, however, was to be the foundation of the claim for damages, and it showed that the action could not succeed without impugning it. The claim under s. 75 must fail. That section could not be invoked without impugning the order, since it prescribed what might or might not be acquired by such an order. The same applied to the allegation of want of notice to the plaintiff. That involved matters preliminary to the order, and could not be relied on once the order had become operative in accordance with para. 3 of Sched. II. Paragraph 3 of Sched. I prescribed the notices to be given by the acquiring authority before submitting an order to the Minister for confirmation, including, under sub-para. (*b*), a notice to "every owner . . . of any land to which the order relates." It was doubtful if those words could possibly include anything except land which it was proposed to acquire under the order. If that were the sole question at issue, however, there might be a point to argue. Counsel for the plaintiff really sought to have those words construed as meaning "lands affected by the order." The third claim, based on damage to the amenity of the plaintiff's house, assumed that the council could have taken other land, reliance being placed on the principle enunciated

by Lord Atkinson in *Lagan Navigation Co.* v. *Lambeg Bleaching, etc., Co., Ltd.* [1927] A.C. 226, at p. 243, that, if statutory powers might at will be exercised in a manner hurtful or innocuous to third parties, the person exercising them would be held negligent if he chose the former, both being available. That principle had no application here, where a compulsory purchase order by statute vested land in the authority exercising the powers. The cause of action set up in the statement of claim must so plainly fail that it must be struck out. The appeal was dismissed.

LYNSKEY, J., gave judgment agreeing.

COUNSEL: *Fortune; Simes*, K.C., and *C. E. Scholefield.*

SOLICITORS: *Crossman, Block & Co.*, for *Eaton Smith and Downey*, Huddersfield; *Bell, Brodrick & Gray*, for *Hunt and Wrigley*, Northallerton.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

Eccles *v.* Bryant and Another

Vaisey, J. 19th May, 1947

Contract—Sale of land—Exchange of contracts—Repudiation by vendor after signature—Offer and acceptance.

Action.

After certain negotiations, a draft contract was agreed and prepared providing for the sale, by the defendants to the plaintiff, of a freehold house and surrounding land. On 11th June, 1946, the defendants' solicitors informed the plaintiff's solicitors that the defendants' part of the contract had been signed, and that they were ready to exchange. The plaintiff's solicitors replied on 14th June that they were obtaining their client's signature and would forward their part in due course. The defendants' solicitors acknowledged the letter on 15th June, and stated that if the matter was to go through, the contracts must be exchanged immediately, and it must be completed by the 24th. On 17th June the defendants' solicitors were informed on the telephone that the plaintiff had signed the contract; they made no mention of withdrawal. On 18th June the plaintiff's solicitor posted the plaintiff's part of the contract to the defendants' solicitors. This letter crossed in the post a letter from the defendants' solicitors, also dated on the 18th, which stated that the defendants had decided not to proceed with the sale, owing to the plaintiff's delay in dealing with the matter. On 24th June the defendants entered into a contract to sell the property to a third party at an enhanced price. In the meantime the plaintiff registered his contract as an "estate contract." The plaintiff brought this action for specific performance, or alternatively, for damages.

VAISEY, J., said that there was no real analogy between the delivery of a deed, after being signed and sealed, and the exchange of two parts of a contract. Physical exchange of contracts at a pre-arranged time and place was a common and convenient practice, and an intention might usually be inferred to make the moment of the actual formation of the contract the moment when the documents were passed across the table. It was more difficult to discover the critical moment when the exchange was by post. In the present case the solicitors had authority to arrange for any reasonable procedure, whether a ceremonial exchange or otherwise. The effect of the correspondence and telephone conversation was that the defendants' solicitors in fact said: "We have signed our part of the contract so that if you sign your part and post it the matter will be in order." Put in another way, the defendants' signature, *plus* the letter of 11th June, was an offer, and the plaintiff's signature, *plus* the letter from his solicitors of 18th June, was an acceptance taking effect on the posting of the letter on 18th June: see *Harris' Case* (1872), L.R. 7 Ch. 587, and *Henthorn* v. *Fraser* [1892] 2 Ch. 27. A number of cases had been cited which contained references to contracts being "signed and exchanged," which only meant that they had to be signed and made binding, not necessarily by physical exchange but by any other method which the parties might adopt. While an exchange of contracts was usual, it was in no sense essential, and there was nothing in the authorities to say that it was. A decree for specific performance would be granted, with costs.

COUNSEL: *Fox-Andrews*, K.C., and *R. E. Hopkins; N. Gray*, K.C., and *H. A. Rose.*

SOLICITORS: *Godfrey Warr & Co.; Nisbet, Drew and Loughborough*, for *Pearless, de Rougemont & Co.*, East Grinstead.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

Southern Counties Building Society *v.* Eastwood Priory, Ltd., and Others

Jenkins, J. 25th June, 1947

Emergency legislation—Mortgage—Leave to enforce judgment—Onus of proof—Mortgaged property in "evacuation area"—Applicability of Defence (Evacuated Areas) Regulations (S.R. and O., 1940, No. 1209, and 1945, No. 1453) and of Liabilities (War-Time Adjustment) Act, 1944 (7 & 8 Geo. 6, c. 40)—Courts (Emergency Powers) Act, 1943 (6 & 7 Geo. 6, c. 19), s. 1 (1), (4).

Summons.

The plaintiffs were the mortgagees and the defendant company the mortgagors of certain properties which the defendant company were developing as a building estate; the individual defendants were guarantors. The mortgages were dated from 1934 to 1936. Interest payments fell into arrear and the plaintiffs issued a writ on 19th May, 1939, and on 27th February, 1941, Farwell, J., made an order for an account and payment of the amount found due, which was ascertained to be £12,177. The plaintiffs took out this summons under the provisions of the Courts (Emergency Powers) Act, 1943, for leave to proceed to execution on the order of Farwell, J. The mortgaged premises were situated in a district which had been declared for the purposes of certain Defence Regulations as an "evacuation area," and the defendants contended, *inter alia*, that as a result of the provisions of the Defence (Evacuated Areas) Regulations of 1940 and 1945 and of the Liabilities (War-Time Adjustment) Act, 1944, a moratorium was imposed in respect of the relief sought by the plaintiffs in respect of the premises concerned, and that leave to proceed under the provisions of the 1943 Act ought not to be granted. By s. 1 (1) of the Courts (Emergency Powers) Act, 1943: "Subject to the provisions of this Act, a person shall not be entitled, except with the leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order . . . for the payment . . . of a sum of money." By subs. (4): "If, on any application for such leave as is required under this section for the exercise of any of the rights and remedies mentioned in subsection (1) . . . the appropriate court is of opinion that the person liable to satisfy the judgment or order . . . is unable to do so by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged, the court may . . . refuse leave for the exercise of that right or remedy . . ."

JENKINS, J., said the question for consideration was whether the defendants' inability to pay the mortgage debt was attributable to circumstances arising directly or indirectly out of the war. A defendant seeking to make this out must show that there was a reasonable probability that, but for war conditions, he would have been able to meet the obligation in question. The protection of the Courts (Emergency Powers) Act, 1943, was not designed to save speculators from the consequences of their speculative ventures. It was not enough for defendants to show that possible hopes of success were finally removed by the war; they must show that their difficulties were due to the war and that in all probability they would not have arisen but for the war (*Tomley* v. *Gower and McAdam* [1939] 4 All E.R. 460; *Re Griffiths* [1940] 1 All E.R. 528). The defendants were quite unable to show that their inability to pay was due to the war. The defendant company embarked on a speculative building project, financed with borrowed money, which was not as successful as was hoped, and it had already early in 1939 got into difficulties and fallen into arrear in payments of interest. The defendant guarantor who had appeared was now in receipt of a salary of £418, and was, if anything, in a better position than before the war. At no time could he have implemented his guarantee, if called upon to do so. Regarding the defendants' contentions that the plaintiffs' remedy was bound by the provisions of the Defence (Evacuated Areas) Regulations and the Liabilities (War-Time Adjustment) Act, 1944, it would be embarrassing and improper to express any opinion in the present proceedings. In the present application the only question which the court ought to decide was whether the fetter imposed by s. 1 (1) of the 1943 Act ought or ought not to be removed, having regard to the question whether the inability to pay was or was not due to the war. The plaintiffs would have leave to proceed, without prejudice to any questions arising out of the Defence Regulations which might be raised in further proceedings.

COUNSEL: *Upjohn*, K.C., and *Winterbotham; Havers*, K.C., and *Rowe.*

SOLICITORS: *Whitelock & Storr; Webster Butcher & Johnson.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

The usual monthly meeting of the Directors of the Law Association was held on the 7th July, with Mr. T. L. Dinwiddy in the chair. The other Directors present were Messrs. C. A. Dawson, Ernest Goddard, G. D. Hugh Jones, H. T. Traer Harris, Frank S. Pritchard, F. M. Welsford and William Winterbotham, and the Secretary, Mr. Andrew H. Morton. A sum of £116 was voted in relief of deserving applicants and other general business was transacted.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 1352. **Courts** (Emergency Powers) (Amendment) Rules. June 30.
No. 1355. **Finance** (Egyptian Assets) Direction. July 1.
No. 1356. Finance (Sudanese Assets) Direction. July 1.
No. 1295. **Income Tax** (Employments) (No. 6) Regulations. June 24.
No. 1310. **Labelling of Food** (General Licence) Order. June 25.
No. 1322. **Motor Vehicles** (Construction and Use) (Amendment) Regulations. June 25.
No. 1291. **National Insurance** (Approved Societies) Regulations. June 24.
No. 1357. **Official Secrets** (Ministry of Supply) Order. July 1.
No. 1335. **Regulation of Payments** (Norway and the Spanish Monetary Area) Order. June 28.
No. 1236. **Safeguarding of Industries** (Exemption) (No. 3) Order. June 25.
No. 1309. **Solicitors** (Prescription of Metropolitan Police Fund) Order. June 20.
No. 1299. **Trunk Roads Act, 1946** (Modification of Description of Routes) (No. 2) Order. June 19.

DRAFT STATUTORY RULES AND ORDERS, 1947

Double Taxation Relief (Taxes on Income) (New Zealand) Order. June 27.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—
AGRICULTURE (EMERGENCY PAYMENTS) BILL [H.C.]. [30th June.
BOROUGH OF CROYDON (RATING) BILL [H.L.]. [30th June.
BRIGHTON CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.C.]. [30th June.
ELECTRICITY BILL [H.C.]. [1st July.
MEXBOROUGH AND SWINTON TRACTION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.C.]. [30th June.
MINISTRY OF HEALTH PROVISIONAL ORDER (GLOUCESTER) BILL [H.C.]. [30th June.
MINISTRY OF HEALTH PROVISIONAL ORDER (LEEDS) BILL [H.C.]. [30th June.
MINISTRY OF HEALTH PROVISIONAL ORDER (TORQUAY) BILL [H.C.]. [30th June.
MINISTRY OF HEALTH PROVISIONAL ORDER (TUNBRIDGE WELLS) BILL [H.C.]. [30th June.
NEWHAVEN AND SEAFORD SEA DEFENCES BILL [H.C.]. [3rd July.
NORTHERN IRELAND BILL [H.C.]. [30th June.
PROBATION OFFICERS (SUPERANNUATION) BILL [H.C.]. [30th June.

Read Third Time :—
NATIONAL SERVICE BILL [H.C.]. [2nd July.
NOTTINGHAMSHIRE AND DERBYSHIRE TRACTION BILL [H.C.]. [1st July.

In Committee :—
ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) BILL [H.L.]. [30th June.
INDUSTRIAL ORGANISATION BILL [H.C.]. [2nd July.
LOCAL GOVERNMENT (SCOTLAND) BILL [H.L.]. [30th June.
TOWN AND COUNTRY PLANNING BILL [H.C.]. [3rd July.

HOUSE OF COMMONS

Read First Time :—
INDIAN INDEPENDENCE BILL [H.C.].
To make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions. [4th July.

Read Second Time :—
CROWN PROCEEDINGS BILL [H.L.]. [4th July.
NAZEING WOOD OR PARK BILL [H.L.]. [1st July.
SOUTHEND-ON-SEA CORPORATION BILL [H.L.]. [1st July.

Read Third Time :—
TYNEMOUTH CORPORATION BILL [H.C.]. [4th July.
WEAR NAVIGATION AND SUNDERLAND DOCK BILL [H.L.]. [1st July.

In Committee :—
FOREIGN MARRIAGE BILL [H.L.]. [4th July.

QUESTIONS TO MINISTERS

END OF WAR (OFFICIAL DATE)

Mr. JANNER asked the Attorney-General when he anticipates it will be possible to make a definite announcement with regard to the official date for the end of the war; and whether, in view of the number of agreements which cannot be determined until this date is known, the decision will be expedited.

Sir HARTLEY SHAWCROSS: Whether this country is at war with any other country or not is, in each case, a question of mixed fact and law. If arbitrary dates for the end of the war are to be prescribed with the object of determining the intentions of parties to agreements legislation will be required. It appears from careful inquiries which have been made that there is no widespread demand for such legislation. The reason seems to be that agreements vary so considerably in their subject matter and circumstances that any attempt to prescribe an arbitrary date would in many cases obscure the real intentions of the parties, and obstruct the interpretation of the agreement. In some cases parties may, for instance, have contemplated the cessation of actual hostilities. In others, the conclusion of a treaty of peace. I would remind my hon. friend that for the purposes of certain tenancy agreements dates have already been prescribed under the Validation of War-Time Leases Act, 1944, but tenancy agreements are a limited class of contracts to which special considerations apply. [3rd July.

ACCESS TO MOUNTAINS ACT

Answering questions by Mr. GRANVILLE SHARP, the MINISTER OF AGRICULTURE said that so far no one had applied for an Order under the Access to Mountains Act, 1939, and therefore no Order had been made. He added that it would be best for any re-examination of the provisions of the Act and the regulations made thereunder (including those provisions dealing with fees and expenses to be paid by applicants for Orders under the Act) to await the report of the Hobhouse Committee, appointed in July, 1946, to consider the means of providing access for the public to mountain, moor, heath and other uncultivated land, with particular reference to the recreational use of the countryside by the public. [30th June.

LAND ACQUISITION (VALUATIONS)

Asked by Mr. A. EDWARD DAVIES how district valuers are guided in their valuations, which are sometimes "far below the current prices," of properties and lands which local authorities wish to acquire, the MINISTER OF HEALTH said that district valuers applied their local knowledge under the guidance of the Chief Valuer, Inland Revenue Department. Their valuations, however, were governed by the statutory provisions relating to the compulsory acquisition of land, the interpretation of which was finally a matter for the courts, and he had no authority to intervene. [3rd July.

CURRENCY OFFENCES (PROSECUTIONS)

The CHANCELLOR OF THE EXCHEQUER, answering Mr. ARTHUR LEWIS, said that thirty-six people had been prosecuted this year for illegal foreign currency deals or similar offences. They had all been convicted, and fines totalling £85,304 had been imposed. In one case three months' imprisonment had also been imposed. Other cases were pending. [3rd July.

CHILD ADOPTION

In reply to a question by Mr. LIPSON regarding the recommendations of the Gamon Committee on child adoption, including the placing of adopted children in the same position as others regarding the succession to property, the HOME SECRETARY promised to take the contents of the report into consideration when there is opportunity for amending legislation, but could not hold out hope of legislation in the near future. [3rd July.

FOREIGN NATIONALS (BRITISH-BORN WIVES)

In reply to a question by Mr. GAMMANS on the introduction of legislation whereby the British-born wives of Polish and other foreign nationals may retain their British nationality, the HOME SECRETARY said that a Conference of Experts from countries of the Commonwealth had met in February last to discuss nationality matters of general interest. It was proposed shortly to circulate to the Governments of the countries represented the text of a Bill based on the report of that conference, and that text would include provisions to carry out the policy of the Government already announced in regard to British-born women. In the meantime he could not say when the legislation contemplated could be introduced. [3rd July.

RULES AND ORDERS

S.R. & O., 1947, No. 1352/L.17

COURTS (EMERGENCY POWERS)

THE COURTS (EMERGENCY POWERS) (AMENDMENT) RULES, 1947

DATED JUNE 30, 1947

I, William Allen, Viscount Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 7 of the Courts (Emergency Powers) Act, 1943*, and of all other powers enabling me in this behalf, do hereby make the following Rules :—

1. The following paragraph shall be substituted for paragraph (5) of Rule 7 of the Courts (Emergency Powers) Rules, 1943† (in these Rules referred to as " the principal Rules ") :—

" (5) This Rule shall not apply where an order giving leave to proceed is included in a default judgment in pursuance of Rule 23 (*a*) or where the plaintiff is entitled to proceed as if leave had been given in pursuance of Rule 9 (2A)."

2.—(1) In Rule 9 (2) of the principal Rules after the word " appearance " there shall be inserted the words " in an action in which there is a claim to a judgment to which section 1 applies."

(2) The following paragraph shall be added after Rule 9 (2) :—

" (2A) If the plaintiff enters judgment in default of appearance in an action in which there is a claim to a judgment to which section 2 applies and by that time the defendant has not filed in or sent to the office or registry from which the writ of summons issued a counter-notice in Form 2 and has not applied for relief, then (except in an action to which paragraph (4) of this Rule applies), the plaintiff shall be entitled to proceed as if leave had been given."

3. The following Rule shall be added after Rule 16 of the principal Rules :—

" 16A. Where by these Rules any party seeking to enforce a judgment is required to produce an order giving leave to proceed or a statement or præcipe showing that leave to proceed has been given it shall be sufficient to show that the plaintiff is entitled to proceed in pursuance of Rule 9 (2A)."

4. These rules may be cited as the Courts (Emergency Powers) (Amendment) Rules 1947 and shall come into operation on the 14th day of July 1947.

Dated the 30th day of June, 1947. *Jowitt*, C.

* 6 & 7 Geo. 6, c. 19. † S.R. & O. 1943 (No. 1113) I, p. 148.

NOTES AND NEWS

Honours and Appointments

Mr. NEVILLE HOBSON, solicitor, of Beverley, Yorks, has been appointed Chairman of the Rural District Councils Association. He was admitted in 1908.

Notes

The Recorder of Stamford has fixed the next Quarter Sessions for the Borough of Stamford to be held on Wednesday, 30th July, at 11.30 a.m.

Wills and Bequests

Mr. R. Breach, solicitor, of Steyning and Hove, left £15,743.

COURT PAPERS

SUPREME COURT OF JUDICATURE

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

TRINITY SITTINGS, 1947

ROTA OF REGISTRARS IN ATTENDANCE ON

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., July 14	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., ,, 15	Hay	Jones	Reader
Wed., ,, 16	Farr	Reader	Hay
Thurs., ,, 17	Blaker	Hay	Farr
Fri., ,, 18	Andrews	Farr	Blaker
Sat., ,, 19	Jones	Blaker	Andrews

	Group A		Group B	
Date	Mr. Justice Roxburgh *Witness*	Mr. Justice Wynn Parry *Non-Witness*	Mr. Justice Romer *Witness*	Mr. Justice Jenkins *Non-Witness*
Mon., July 14	Mr. Farr	Mr. Blaker	Mr. Reader	Mr. Hay
Tues., ,, 15	Blaker	Andrews	Hay	Farr
Wed., ,, 16	Andrews	Jones	Farr	Blaker
Thurs., ,, 17	Jones	Reader	Blaker	Andrews
Fri., ,, 18	Reader	Hay	Andrews	Jones
Sat., ,, 19	Hay	Farr	Jones	Reader

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price July 7 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	111	3 12 1	2 12 2
Consols 2½%	JAJO	91	2 14 11	—
War Loan 3% 1955–59	AO	105	2 17 2	2 5 2
War Loan 3½% 1952 or after	JD	104¼	3 6 10	2 11 1
Funding 4% Loan 1960–90	MN	116	3 9 0	2 10 10
Funding 3% Loan 1959–69	AO	105	2 17 2	2 10 3
Funding 2½% Loan 1952–57	JD	103	2 13 5	2 2 2
Funding 2½% Loan 1956–61	AO	101	2 9 6	2 7 4
Victory 4% Loan Av. life 18 years	MS	118½	3 7 6	2 13 9
Conversion 3½% Loan 1961 or after	AO	110	3 3 8	2 12 8
National Defence Loan 3% 1954–58	JJ	104	2 17 8	2 5 7
National War Bonds 2½% 1952–54	MS	102½	2 8 9	1 19 11
Savings Bonds 3% 1955–65	FA	104¼	2 17 5	2 6 8
Savings Bonds 3% 1960–70	MS	104	2 17 8	2 12 9
Treasury 3%, 1966 or after	AO	103	2 18 3	2 15 10
Treasury 2½%, 1975 or after	AO	91	2 14 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101½	2 19 1	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	101½	2 14 2	—
Redemption 3% 1986–96	AO	108	2 15 7	2 13 3
Sudan 4½% 1939–73 Av. life 16 years	FA	119½xd	3 15 4	2 19 1
Sudan 4% 1974 Red. in part after 1950	MN	115½	3 9 3	—
Tanganyika 4% Guaranteed 1951–71	FA	105½xd	3 15 10	2 6 3
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101xd	2 9 6	—
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	110	3 12 9	2 10 2
Australia (Commonw'h) 3½% 1964–74	JJ	108	3 0 2	2 13 2
*Australia (Commonw'h) 3% 1955–58	AO	104½	2 17 5	2 7 6
†Nigeria 4% 1963	AO	119½	3 6 11	2 10 2
*Queensland 3½% 1950–70	JJ	103	3 8 0	—
Southern Rhodesia 3½% 1961–66	JJ	111½	3 2 9	2 10 4
Trinidad 3% 1965–70	AO	106½	2 16 4	2 10 6
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100½	2 19 8	—
*Leeds 3½% 1958–62	JJ	106	3 1 3	2 11 3
*Liverpool 3% 1954–64	MN	104	2 17 8	2 7 3
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	119	2 18 10	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	101½	2 19 1	—
*London County 3½% 1954–59	FA	108xd	3 4 10	2 5 4
*Manchester 3% 1941 or after	FA	101	2 19 5	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 8 0
Met. Water Board "A" 1963–2003	AO	103½	2 18 0	2 14 7
* Do. do. 3% "B" 1934–2003	MS	102	2 18 10	—
* Do. do. 3% "E" 1953–73	JJ	103	2 18 3	2 8 2
Middlesex C.C. 3% 1961–66	MS	106	2 16 7	2 9 10
*Newcastle 3% Consolidated 1957	MS	105	2 17 2	2 8 0
Nottingham 3% Irredeemable	MN	106	2 16 7	—
Sheffield Corporation 3½% 1968	JJ	114	3 1 5	2 12 6
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	120½	3 6 5	—
Gt. Western Rly. 4½% Debenture	JJ	121½	3 14 1	—
Gt. Western Rly. 5% Debenture	JJ	132½	3 15 6	—
Gt. Western Rly. 5% Rent Charge	FA	130½	3 16 8	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	129½	3 17 3	—
Gt. Western Rly. 5% Preference	MA	118½	4 4 5	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.

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